

Business Update

Penalties to be Assessed

Substitute Senate Bill 6097 established penalties to be assessed when employers file incomplete tax and wage reports or reports on an incorrect format. The rules have been established through the emergency rules process and hearings were held across the state to receive comments from interested parties.

While the law became effective June 20, 2003 the Department determined it would first undertake an effort to educate employers regarding the potential for assessment of penalties. To this end, a flyer was included with the tax rate notices mailed in November that covered all changes related to tax. A second flyer was included with benefit statements in December that covered all changes related to benefits. The Business Update included with the 4th quarter reports covered these changes as well.

Implementation

The Department will review all reports submitted for 2nd quarter (due no later than July 31, 2004) to determine whether they meet the new requirements. Employers submitting reports that do not meet the requirements will receive a warning letter letting them know that if they do not meet the new requirements with their 3rd quarter report a penalty will be assessed.

What is an Incomplete Report?

A report is incomplete if:

- The entire wage report is not submitted along with the tax report
- A required element is not reported (SSN, name, hours worked or wages paid)
- A significant number of employees are not reported
- A significant number of any given element is not reported such as, but not limited to, missing SSNs, names, hours, wages
- No Employer Reference Number or Unified Business Identifier (UBI) number is included on the tax and/or wage report.

What is an Incorrect Format?

An incorrect format includes:

- Reports not filed on the most current version of UIFastTax, UIWebTax or ICESA WA
- Reports filed on paper forms that are either not provided by the Department or not certified by the Department
- Reports that include more wage items per page (20 wage items) than allowed by the form even if printed on approved forms.

Employers that file an Incomplete Report using an Incorrect Format will receive the higher penalty assessed by error type.

In addition, penalties will be assessed against employers that file a report and knowingly misrepresent the amount of their payroll. The costs associated with the audit of the employers books will also be charged to the employer.

What are the Penalty Amounts?

Penalty for Late Filing

By rule, an employer who files a late tax report or payment will be liable for a penalty of \$25 per violation.

WAC 192-310-010(c).

(3) Penalty for filing an incomplete or incorrect format tax report. An employer who fails to file a report required by RCW 50.12.070 is subject to penalty as follows:

(a) Incomplete tax report. The penalty for filing an incomplete tax report will be two hundred fifty dollars or ten percent of the quarterly contributions for each occurrence, whichever is less. When no quarterly tax is due and an employer has submitted an incomplete report, the following schedule will apply:

- | | |
|--|----------|
| (i) 1 st Occurrence | \$ 75.00 |
| (ii) 2 nd Occurrence | \$150.00 |
| (iii) 3 rd and subsequent occurrences | \$250.00 |

(b) Filing tax report in an incorrect format. The penalty for filing a tax report in an incorrect format will be two hundred fifty dollars or ten percent of the quarterly contributions for each occurrence, whichever is less. When no quarterly tax is due and an employer has submitted a tax report in an incorrect format, the following schedule will apply:

- | | |
|---|----------|
| (i) 1 st Occurrence | \$150.00 |
| (ii) 2 nd and subsequent occurrences | \$250.00 |

(4) Knowingly misrepresenting amount of payroll. If an employer knowingly misrepresents to the department the amount of his or her payroll, upon which contributions under this title are based, the employer is liable for a penalty of ten times the difference between the contributions paid, if any, and the amount of contributions the employer should have paid for the period. This penalty is in addition to the amount the employer should have paid. The employer is also liable to the department for the reasonable expenses of auditing his or her books and collecting such sums as provided in WAC 192-340-100.

Please share this with:

- ☐ Owner
- ☐ Accountant/Bkkr.
- ☐ Business Associate
- ☐ HRM Manager
- ☐ Office Manager
- ☐ Other _____

March 2004

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Seattle South	(206) 766-6300
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Vancouver	(360) 735-5050
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Washington State
Employment Security

Rules Process

A number of changes to unemployment insurance law, caused by the passage last year of Second Engrossed Senate Bill 6097 (2ESB 6097), took effect on Jan. 4, 2004, for claims with an effective date of Jan. 4, 2004 or later. In addition, the department has adopted emergency rules effective Jan. 4, 2004 to implement the legislation. Highlights include:

Voluntary Quits for Good Cause.

What's New: State law has been amended to codify only ten specific reasons that are considered good cause for an individual to quit work.

- Reasons not attributable to the employer (employer may request relief of charges):
 - o To accept a bona fide offer of work
 - o Due to the illness or disability of the claimant, or the death, illness, or disability of a member of the claimant's immediate family. The claimant must have pursued all reasonable options to remain employed. Benefits are only payable if the claimant has separated from employment and is not eligible to be reinstated in the same or similar position.
 - o To relocate with a military spouse due to a mandatory transfer. The transfer has to be within Washington (outside their current labor market) or to a state that allows benefits for a quit to follow a spouse (15 other states allow benefits).
 - o To protect the claimant or a member of his/her immediate family from domestic violence or stalking.
- Reasons attributable to the employer (see Benefit Charges information):
 - o Usual compensation is reduced by 25% or more. "Compensation" includes all wages, benefits, or other forms of payment provided to the claimant.
 - o Usual hours are reduced by 25% or more. The percentage is based on the individual hiring agreement, not industry standard. Reductions due to seasonal fluctuations are not included.
 - o The worksite was moved, causing a material increase in the distance or difficulty of travel, and the commute is now greater than is customary for workers in that job classification and labor market.
 - o The worksite safety deteriorated, the individual reported the hazard to the employer, and the employer did not correct the hazard within a reasonable period of time.
 - o The individual has reported illegal activities at the worksite to the employer, and the employer has failed to correct the situation within a reasonable period of time unless notification could jeopardize the individual's personal safety or is contrary to other laws (e.g., whistleblower protection laws).
 - o The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs. The individual must request alternative work from the employer.

An individual cannot be denied benefits for refusing new work that is unsuitable. New work includes an offer by the individual's present employer of different duties or different terms or conditions of employment. If the individual cannot establish good cause as shown above, the department will determine if there was an offer of new work. If the new work is substantially less favorable to the individual than the standard for that occupation and labor market area, the separation will be treated as a layoff and a decision issued regarding the refusal of work for good cause.

Benefit Charges to Separating Employer

What's new: If an employee quits work for one of the six reasons that are attributable to the employer, and the separating employer is a taxable base period employer, 100% of the benefits on the claim will be charged to the separating employer.

In addition, if the employee quit work for Employer A to accept a job with Employer B, and Employer B is the separating employer and a taxable base period employer, 100% of the benefits on the claim will be charged to Employer B.

Misconduct

What's new: The definition of "misconduct" includes, but is not limited to, acts that show a willful or wanton disregard of the employer's interests, that violate standards of behavior that an employer has the right to expect, or carelessness or negligence of such degree or recurrence that it would likely cause serious bodily harm or shows a substantial disregard of the employer's interests. The disqualification period for misconduct is at least 10 weeks, continuing until the individual returns to work and earns 10 times his/her weekly benefit amount.

By rule, to constitute "misconduct" the action or behavior must result in harm or create the potential for harm to the employer. The harm can be tangible (damage to equipment or property) or intangible (staff morale or business reputation).

A new definition of gross misconduct includes (a) criminal acts connected to the work of which the individual has been convicted or has committed to a competent authority; or (b) conduct that shows a flagrant and wanton disregard of the employer's interests. Flagrant and wanton disregard is defined as "conspicuously bad or offensive behavior showing contemptuous disregard for the law, morality, or the rights of others."

The penalty is cancellation of all wage credits from that employer, or cancellation of 680 hours of base period wages, whichever is higher. This is in addition to the 10x10 disqualification.

When a claimant has been denied benefits because of misconduct or gross misconduct, any overpayment of benefits is collectible. The claimant is not eligible for waiver or an offer in compromise for the overpayment.

Calculation of Weekly Benefit Amount

What's new: The weekly benefit amount (WBA) will be based on 4% of the three highest quarters in the base period. In 2005, the WBA will be 1% of the total base year wages.

Duration of Benefits

What's new: When the unemployment rate reaches 6.8% or below, the maximum benefits payable on a claim will be 26 weeks. By rule, "unemployment rate" is defined as the 3-month seasonally adjusted total unemployment rate. This reduction will be permanent.

Job Search requirements:

What's new: The department is verifying the job search activities of Washington claimants who live in other states. Claimants can be denied when they are unable to show they met the job search requirements. For claims effective January 4, 2004, or later, claimants must show proof of at least three employer contacts per week, three in-person activities at the WorkSource office, or a combination. Union members must comply with their union's referral or dispatch requirements to be eligible for benefits.

Report a Fraud Today!

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Quarterly UI Tax reports and payments are due April 30, 2004.

Employment Security is an equal opportunity employer and provider of employment and training services. Auxiliary aids and services are available upon request to persons with disabilities.